

# Citizens Research Council of Michigan

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## Michigan Constitutional Issues

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### SYSTEM OF LOCAL GOVERNMENT

#### THE ISSUE IN BRIEF

At the November 8, 1994 general election, the voters of Michigan will decide whether to call a constitutional convention to revise the Michigan Constitution of 1963. The question appears on the statewide ballot automatically every 16 years as required by the Constitution.

Article 7 on "Local Government" contains many of the provisions regarding the system of local government in Michigan, which include counties, townships, cities and villages and authorities. (School districts and community college districts do not have constitutional status.) There are two major issues on local government that a constitutional convention might address:

1. Is the present basic organizational structure of local government adequate to meet the needs of today and tomorrow? There are 1,859 overlapping counties, townships, cities and villages, more than 60 percent of which serve fewer than 2,500 people, providing local services and using scarce public resources.
2. Are the powers of local units of government sufficiently broad and flexible to permit them to respond effectively to the needs of their citizens and to be held accountable to the public?

#### Local Government Provisions in the Michigan Constitution

Article 7 contains 34 sections: 16 deal with county government; four with townships; six with cities and villages; and two with metropolitan government or joint administration. Six sections cover more than one type of local government. Other provisions that affect local government are scattered throughout the Constitution. Of the 51 proposed constitutional amendments that have been submitted to the voters since 1963, none dealt with the Local Government Article of the Constitution.

#### Local Government Structure in Michigan

Much of the system of local government organization today was established in the Northwest Ordinance of 200 years ago, and was institutionalized in the 1835, 1850, 1908, and 1963 Constitutions. The 1963 Constitution made relatively few changes in the basic structure of local government. The system of local government in Michigan is composed of counties, townships, cities and villages and special districts. The number of local units in Michigan has changed relatively little since the 1963 Constitution.

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### Number of Units of Local Government in Michigan

	<u>1962</u>	<u>1992</u>	<u>Change</u>
Counties	83	83	-0-
Townships	1259	1242	- 17
Cities & Villages	<u>509</u>	<u>534</u>	+ <u>25</u>
Sub-Total	1851	1859	+ 8
Special Districts	99	277	+178

The only significant change in the past 30 years has been in the number of special districts, primarily in library, airport, solid waste, and water and sewer. The modest decline in the number on townships reflects the incorporation of cities. There was a net increase of only eight general purpose local units between 1962 and 1992.

### Governmental Units in Michigan by Population Groups

<u>Population Groups</u>	<u>Counties</u>	<u>Cities/Villages</u>	<u>Townships</u>	<u>Total</u>
100,000 and over	18	8	0	26
25,000 - 99,999	33	37	17	87
2,500 - 24,999	31	171	403	605
Less than 2,500	<u>1</u>	<u>318</u>	<u>82</u>	<u>1,141</u>
Total	83	534	1,242	1,859

Most of the general purpose local units serve relatively small populations. Only 113 of the 1,859 general purpose governments serve 25,000 or more people; 1,141 serve less than 2,500 people, and 548 of these serve less than 1,000 people. These 1,859 general purpose local units have an estimated total of 15,000 elected officials.

In addition to a large number of local units, local governments in Michigan are overlapping jurisdictions, not only geographically, but also in powers and functions. County governments overlap city and township governments and townships overlap village governments. An incorporated city is separate from the township, but a village continues as part of the township.

**The Issues on Local Government Structure** A basic question a constitutional convention should consider is whether the present organizational structure of local government meets the current and future needs of citizens. A convention could examine the need for 1,859 local units of government, 61 percent of which serve fewer than 2,500 people. A convention might consider whether county, township, city and village, and special authority districts, with overlapping geographical boundaries, as well as overlapping powers and service responsibilities, are the most effective means of providing local services and the most efficient use of scarce public resources. A constitutional convention might consider “reinventing” local government.

A comprehensive review 20 years ago by the Governor’s Special Commission on Local Government concluded that the local government structure needed to be reorganized to “define the power and authority relationships between counties and municipalities in both service delivery and regulatory functions.” The Commission also recommended that the local government framework include a municipal level of government consisting of two classes of municipalities, charter cities and townships, equal in their relationship to each other and other levels of govern-

ment. This new framework of municipal government would eliminate the intermediate form of government, the village.

### Home Rule

The people in the state constitution define the legal relationship between the state and local governments and establish the relative degree of dependence on or independence from state control of local governments. The dichotomy between state control and local self government is illustrated by Dillon's Rule and the Cooley Doctrine. The theory of state preeminence over local governments was expressed as Dillon's Rule in a 1868 case:

Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control. **Clinton v Cedar Rapids and the Missouri River Railroad**, (24 Iowa 455; 1868).

As opposed to Dillon's Rule, the Cooley Doctrine expressed the theory of an inherent right to local self determination. In a concurring opinion, Michigan Supreme Court Judge Thomas Cooley in 1871 stated: “[L]ocal government is a matter of absolute right; and the state cannot take it away.” **People v Hurlbut**, (24 Mich 44, 95; 1871).

The continuing tension between Dillon's Rule and the Cooley Doctrine is the attempt to balance the interests of the state against the rights of communities to determine their own government. Through the state constitution, the people can establish the structure of local government and the distribution and balance of powers between the state government and local governments.

Under home rule, power is granted to local units to deal with local problems and needs. Michigan is considered a strong home rule state. The Michigan Constitution is one of 37 state constitutions that provide home rule for cities and one of 23 state constitutions that give home rule powers to counties. The Michigan Constitution of 1908 provided home rule for cities and villages and the Constitution of 1963 extended home rule to counties, but Wayne is the only county that has adopted a home rule charter. Townships do not have home rule powers.

The constitutional status of township and county officers has been retained in each of the four Michigan Constitutions. The 1963 Constitution requires the election as township officers of a supervisor, clerk, treasurer, and not to exceed four trustees. It also requires the election as county officers of a sheriff, clerk, treasurer, register of deeds, and prosecuting attorney. These constitutional elected county officers must be continued even in a home rule charter form of county government, despite the provision in the 1963 Constitution that the county home rule charter enabling legislation may permit the organization of county government in form different from that set forth in this Constitution. The state constitution does not require specific city or village elected officials: the form of government and elected officials are determined in the home rule charter.

**Home Rule Issues** The Governor's Special Commission on Local Government recommended that the Constitution be amended so that townships be permitted to reorganize under the provi-

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sions of the Home Rule City Act without regard to the population and density requirements. Both cities and townships would have separate executive and legislative branches of government. Subject to voter approval of a proposed charter, townships would be able to choose by referendum whether the executive branch be popularly elected or appointed by the township council.

With respect to counties, the Governor's Commission recommended "that county government be structured to require the establishment of an executive officer with full responsibility over all the agencies of county government" and "the use of a referendum to determine the method of selecting a county executive officer by election or through appointment by the Board of County Commissioners." The commission also recommended "that the Legislature adopt a resolution calling for a revision of Article VII, Section 4, of the Michigan Constitution, and in its place permit each county to decide by action of the county board of commissioners which, if any, of the county officers it shall establish and whether such other officers shall be elected or appointed, subject to popular referendum."

The 1963 Constitution continued the provisions of the 1850 Constitution regarding representation on the county boards of supervisors of one member from each township and representation from cities as provided by law. Those boards violated one person-one vote principles and were declared invalid under the U.S. Constitution by the U.S. Supreme Court. The Legislature in 1966 required direct election of county commissioners from single member districts. The unconstitutional provisions on the board of supervisors remain in the Constitution.

Another issue is that the 1963 Constitution specifically granted cities and villages power to levy taxes other than property taxes, subject to limitations and prohibitions proved by law to ease the burden on the property tax and to provide additional revenues. However, this constitutional taxing authority was immediately preempted by legislation prohibiting any local non-property tax unless it is specifically authorized by statute.

The city and county home rule provisions of the Michigan Constitution are not self-executing and require implementing legislation. The current implementing legislation for municipal home rule is somewhat broader than that for counties but both are subject to legislative interference and the legislature often shows little self-restraint in interfering in local affairs. A constitutional convention might consider self-executing home rule provisions that would clearly establish home rule supremacy on matters of local concern -- a constitutionally protected sphere of immunity from state intervention in local affairs.